
(1988) 10 KAT CK 0022
In the Karnataka Administrative Tribunal
Case No : Review Application No. 95/87

G. Hemanthakumar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(F)

Citation : (1990) 1 KarLJ 10

Hon'ble Judges : K. R. Chamayya, J.M.; R. A. Naik, Vice Chairman

Judgement

Sri K.R. Chamayya, Member (Judicial)-Applications were invited for the posts of Motor Vehicles Inspectors by Notification bearing No. R(1)8460/83-84/PSC dated 28-9-1983 and results thereof was published by the Public Service Commission (in short "Commission") by notification dated 22-06- 1987. In all, 102 candidates were selected, 68 in the main list and 34 in the additional list. Many persons challenged that selection on various grounds. The main ground which arose for consideration was whether the amendments made to the rules of recruitment when that recruitment was pending are applicable to that selection or not. In other words, whether the recruitment should be finalised in accordance with the rules in force, when the notification inviting applications was published or whether it should be done in accordance with the rules of recruitment as amended when the process of recruitment was pending, by inviting fresh applications. The Tribunal, after hearing the parties to those petitions numbering about. forty applications, passed an order on 30-09-1987, holding that the selection of candidates made in accordance with the rules in force at the time of inviting applications is bad and that the selection should have been made in accordance with the rules as amended when the recruitment was pending. In this application a review of that order dated 30-09-1987 is requested. The only point raised in this application is that all the selected persons were not made parties to that earlier litigation and as such that order is bad in law on the ground that it was made without giving reasonable opportunity of being heard to all persons affected by the order, i.e., the persons declared as selected by notification dated

22- 06-1987.

2. All the selected persons were not parties to the earlier litigation. Out of 102 selected persons, only 17 were before the Tribunal. The remaining 85 persons were not heard before passing that order dated 30-09-1987. The question is whether it affects the validity of the order.

3. The Respondents in this application are the parties to the earlier applications. None of them appeared in this Review Application before us/except the Government Advocate who did not oppose the Applicants in this review application even though the Government's action in amending the rules when the final select list was about to be published has given rise to this litigation. If the Government really wanted to uphold the list, it could have made a provision in the amendment rules that it would not apply to the pending recruitments or atleast filed an appeal before the Supreme Court. Government did not file any appeal before the Supreme Court. Hence, we had no occasion to hear the other side of the question that arises for determination in this case.

4. The order made by us on 30-09-1987, has been assailed in the Supreme Court and the appeal filed has been admitted by the Supreme Court. So, the matter is now seized by the Supreme Court.

5. The relief claimed in some of the applications disposed by us on 30-09-1987 is as follows:

".... to issue a writ in the nature of mandamus to declare the notification No. R(1) 8460/83-84/PSC dated 28-09-1983 under Annexure-E of the 2nd Respondent as unconstitutional and void;

(b) Issue a writ in the nature of mandamus forbearing the 2nd Respondent from making selection for the 68 posts of Inspector of Motor Vehicles in pursuance of the Notification No. R(1) 8460/83- 84/PSC dated 28-09-1983 under Annexure-E of the 2nd Respondent and to interview the Petitioners;

(c) Issue a writ in the nature of mandamus directing the Respondent No. 2 to call for fresh applications for 68 posts of the Inspector of Motor Vehicles mentioning only the qualification of Diploma in Automobile Technology and to make selection in accordance with law."

6. The question raised in this application is that non-joinder of all selected persons as parties to those applications renders the order made by us on 30-09-1987 invalid on the ground of non-joinder of necessary parties and as such that order has to be recalled and heard afresh. It is submitted that the selected persons are the persons really affected by the order of the Court and as such the order made without hearing them is an error which could be set right in this review application by recalling the order made on 30-09-1987.

7. Questions similar to this aspect came up for consideration before the Supreme Court in Janardhan v Union of India, AIR 1983 SC 769, a case relating to

seniority, wherein the Court relying upon the earlier decision of the Supreme Court in *General Manager v Sidhanti*, AIR 1974 SC 1755, held as follows:

"... However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this Court by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P.R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to *General Manager, South Central Railway, Secunderabad v A.V.R. Sidhanti*, (1974) 3 SCR 207 at p.212, AIR 1974 SC 1755 at p. 1759. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by any one individual against another particular individual and, therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negated."

In *Janardhana's* case the question for consideration was about seniority and all persons (direct recruits) likely to be affected if the prayer of the: Petitioners therein was granted, were not made parties to the application. However, some of those direct recruits got themselves impleaded and arguments were advanced on their behalf by a senior counsel. The Court made the above quoted observations holding that non-joinder of all of them will not vitiate the order. In particular the underlined portions there of may be seen wherein it is stated that if some of them are represented it is sufficient. Somewhat similar observations have been

made by the Supreme Court in *Prabhodh Varma v State of Uttar Pradesh*, (1984) 4 SCC 251, relied upon by Sri Ravi Varma Kumar, Advocate for the Applicants wherein also it is stated as follows:

"...The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or atleast by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or atleast some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

In that case, none of the persons likely to be affected were parties to the litigation. If atleast some of them had been made parties, the Court would not have taken that view. This is clear from the underlined portion of the ruling quoted above.

8. In the present case, out of 102 selected persons (68 in the main list and 34 in the additional list), 17 persons were before the Tribunal. They were represented by a senior counsel Sri M.R. Janardhan. The selected persons have not gone unrepresented before the Tribunal. Hence, it cannot be said that they were not represented even in representative capacity. The main grievance of the Applicants in those applications was against the rules of recruitment by which Mechanical Engineering Diploma holders are also made eligible for appointment to the post alongwith Automobile Engineering Diploma holders. According to them, only Automobile Engineering Diploma holders should be made eligible for recruitment since the duties of the post related to motor vehicles. They wanted the rules to be amended suitably and the recruitment made thereafter after withdrawing the notification dated 28-09-1983 by inviting fresh applications. So, the relief claimed is mainly against the State and the department and in against the selected persons, as in Janardhan's case. In the circumstances, we are of the considered opinion that the decision in Janardhan's case is more akin to the facts of this case than *Prabhodh Varma's* case relied upon by Sri Ravi Varma Kumar. Accordingly, hold that the decision cannot be considered as bad on the ground of non-joinder of necessary parties.

9. Such a view, i.e., sufficient representation, gains support from the provisions of sub-section (8) of Section 11 of the Administrative Tribunals Act 1985, which

reads thus:

"(8) Notwithstanding anything contained in sub-rules (1), (2), (3) and (4), if the Tribunal is satisfied that it is not reasonably practicable to serve notice of application upon all the respondents, it may for reasons to be recorded in writing direct that the application shall be heard notwithstanding that some of the respondents have not been served with notice of the application, provided that no application shall be heard unless:

(ii) xxx xxx xxx (iii) the Tribunal is satisfied that the interests of the respondents on whom notice of the application has not been served are adequately and sufficiently represented by the respondents on whom notice of the application has been served."

10. Another aspect to be considered is that the question of non-joinder of necessary parties was not raised before us at the time of hearing those applications. The Applicants therein did not refuse to implead all selected persons.

11. In support of his contention that review is permissible in cases of this type, Sri Ravi Varma Kumar, Advocate, for the Applicants relied upon the decision of the Full Bench of the Allahabad High Court reported in Behari Lal v Gobardhan Lal & others, AIR 1948, ALL 353. In that case, the following question was referred to the Full Bench:

"...whether the filing of an appeal subsequent to the filing of an application for review makes the hearing of the review application incompetent."

That question was answered in the negative by the majority opinion. That case was decided with reference to the provisions in the Civil Procedure Code relating to appeal and review. The majority view was expressed as follows:

"...This when the law gives a Court jurisdiction to entertain an application for a review of judgment, and jurisdiction "cannot be taken away or cut down except by express words or necessary implication." As we have seen, there are no express words in the Code which may oust such jurisdiction on an appeal having been preferred to a higher Court, nor can any necessary implication be inferred from the terms of Section 114 or the Rules contained in O. 47, Civil P.C..."

"(55) The inevitable inference to be drawn from these provisions would not, particularly in view of the provisions of O. 47, Rule 1(2), appear to be that after the filing of the appeal the previously presented review application would be incompetent. Had that been the intention of the legislature, there would have been an express provision to that effect. If it is open to the Court to hear a review application on grounds such as are contemplated under O. 47, Rule 1(2), why must it be assumed that it is not open to the Court to hear a review application filed previous to the presentation of an appeal? By way of answer to the reasoning which had appealed to the learned Judges, who decided the case in 27 Mad. 602, Wallis, J, in delivering the judgment of the Full Bench in 32 Mad. 416 observed as follows:

"The decision in 27 Mad. 602, is based on the proposition that on the filing of an appeal the further litigation and all matters connected therewith are transferred to and placed under the control of the appellate Court, and in support of this proposition certain American decisions are referred to. Now, after an appeal has been filed, the appellate Court is seized of the case and should no doubt be applied to rather than the Court of first instance unless the law expressly enjoins the contrary, as was held in 18 Mad. 214. but it is a very different thing to press this principle so far as to say that the act of a party in filing an appeal deprives the Court of first instance of power to dispose of an application which has been properly made to it in the exercise of its jurisdiction. Such a notion would never, I think, have occurred to the framers of the Code."

(56) I am in full agreement with these observations. The result is that there being no necessary implication, I do not see how we can lay down that by subsequently presenting an appeal after the review application was filed, the aggrieved party made the review application incompetent.

The contra view expressed by the dissenting Judge is as follows:

"The right to file an appeal is a general right which is not restricted in any way. The right to apply for review of a judgment is restricted under Section 114 and Order 47, Rule 1, Civil P.C. It should not, therefore, be an appeal subsequently filed which should be rejected as being incompetent in view of a review application having been filed earlier, but it should be the review application which should be rejected on the ground that it is no more competent, an appeal having been filed against the decree sought to be reviewed and the matter being within the purview of the appellate Court which, as indicated earlier, can look into the grounds on which the review application is presented.

(29) I do not agree with the views expressed in the above cases. I have already expressed the opinion that Section 114, Civil P.C., does not refer to the non-filing of an appeal as a condition precedent for the filing of an application for review, but refers to such non-filing as defining of such appealable decrees or orders from which a party aggrieved can file an application for review. It may also be implied from the facts that the right of review in other cases is also given against such decrees or decisions from which no appeal is provided, that it has been found essential that the hearing of the appeal filed subsequent to the filing of a review application should remain postponed till the decision of the review application in order to make the review application effective and that there is consensus of opinion that simultaneous proceedings of appeal and review were not contemplated by the Code."

Sri Ravi Varma Kumar also placed reliance on the decision of the Supreme Court in *Tungabhadra Industries v Government of Andhra Pradesh*, AIR 1964, S.C. 1372 and he drew our attention to the following observations made therein by the Court.

"The facts in relation to this matter might now be stated. As already seen, the

applications for reviewing the order dated September 4, 1959 refusing the certificate were filed on November 23, 1959. During the pendency of those review applications the appellant filed on November 30, 1959, petitions seeking special leave of this Court under Article 136 of the Constitution but those petitions were filed beyond the period of limitation prescribed by the Rules. An application was therefore filed alongwith the special leave petitions seeking condonation of delay in the filing of the petitions. The petitions and the applications for condonation of delay came on together for hearing and this Court refused to condone the delay, so that the petitions for special leave never legally came on the file of this Court.

(8) Order XLVII, Rule 1(1) of the Civil Procedure Code permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been prepared". In the present case, it would be seen, on the date when the application for review was filed the appellant had not filed an appeal to this Court and therefore the terms of O. XLVII, Rule 1(1) did not stand in the way of the petition for review being entertained. Learned Counsel for the respondent did not contest this position. Nor could we read the judgment of the High Court as rejecting the petition for review on that ground. The crucial date for determining whether or not the terms of O. XLVII, Rule 1(1) are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for Review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been, disposed of the jurisdiction of the Court hearing the review Petition would come to an end."

12. The above decisions are with reference to the provisions in the Civil Procedure Code relating to appeals and reviews. The Court interpreting the said provisions held, that if as on the date the review application is filed, no appeal has been filed, the Court has jurisdiction and competence to dispose of the review application notwithstanding the pendency of the appeal. Sri Ravi Varma Kumar submitted, that as on the date of filing of this application for review, appeal had not been filed before the Supreme Court and as such this review application could be heard and disposed of.

13. The question whether the amendments made to the rules of recruitment are applicable to the recruitment pending as on the date those amendments came into force and fresh applications should be invited is a pure question of law and that is now before the Supreme Court. Even if the review petition could be disposed by us, since it has been filed before the filing of the appeal, the question to be considered is whether it should be done at this stage. The applications were invited in 1983 about 5 years ago. If this application is allowed on the ground of non-joinder of necessary parties, the order made on 30-09-1987 has to be recalled and all selected persons, 102 in number, should be made parties and served with notices and thereafter final orders have to be

passed after hearing them. Having regard to the nature of the litigation and the interest the parties have taken, we are sure that again the matter would be taken up in appeal to the Supreme Court and thereby the matter would be delayed. Hence, we are of the considered opinion that ends of justice would be served if this application is rejected and the applicants are asked to move the Supreme Court to get themselves impleaded in the appeal pending before the Supreme Court so that the dispute could be settled once for all.

14. For reasons stated above, this application is dismissed. The Applicants, if so advised, may move the Supreme Court to get themselves impleaded in the appeal pending before the Supreme Court to urge their points of view before the Court.

15. No order as to costs.

Application dismissed.